

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

PRASHANT JAIN, an individual & Managing
Director of Sirphey L.L.C.;

CORTNI NUCKLOS, Communications
Director/Officer for Sirphey L.L.C.;

SIRPHEY L.L.C., a domestic limited liability
company.

Plaintiffs,

Case No. 1:22-cv-00465

PAUL ANDRUS, Director of Community Development
in the incorporated County of Los Alamos;

MICHAEL ARELLANO, individually and in his
capacity as Chief Building Official of the incorporated
County of Los Alamos;

BOESE BROTHERS BREWING CO., a domestic
Limited Liability Company;

HARRY BURGESS, Manager of the incorporated
County of Los Alamos;

DENISE CASSEL Human Resources Manager,
for the incorporated County of Los Alamos;

CENTRAL PARK SQUARE, a domestic Limited
Liability Company;

COMMUNITY DEVELOPMENT DEPARTMENT,
a department of the incorporated County of Los Alamos;

**COUNTY COUNCIL OF THE COUNTY OF LOS
ALAMOS**, the governing body of the incorporated
County of Los Alamos;

COUNTY OF LOS ALAMOS, a home rule incorporated
entity with both municipal and county authority;

PHILIP KUNSBERG, individually and as Co-owner

/Manager of the Central Park Square Shopping Center;
J. ALVIN LEAPHART, individually and in his official capacity as County Attorney for the County of Los Alamos, its Council and Boards;

LOS ALAMOS BOARD OF APPEALS and its individual members, Terry Priestley, Philo Shelton and Randal Rytí;

ADRIENNE LOVATO, in her official capacity as an employee of the Community Development Department of the County of Los Alamos;

TERRY PRIESTLEY, individually and in his capacity as a Member of the Board of Appeals for the incorporated County of Los Alamos;

RECORDS INFORMATION MANAGEMENT OFFICE, a department of the incorporated County of Los Alamos;

BARBARA RICCI in her official capacity as manager of the Records Information Management Office for the incorporated County of Los Alamos;

RANDALL RYTI, individually and in his capacity as a Member of the County Council of the County of Los Alamos and as a Member of the Board of Appeals for the County of Los Alamos;

TERRY SALAZAR, individually and in his capacity as Property Manager of CPS Square Shopping Center in the incorporated County of Los Alamos;

SARA SCOTT, individually and in her capacity as a Member of the County Council of the incorporated County of Los Alamos, and in her capacity as a Member of the Board of Appeals of the incorporated County of Los Alamos;

SMITH'S FOOD & DRUG CENTERS, INC., a foreign, for-profit corporation incorporated in Ohio;

PHILO SHELTON, individually and in his capacity as a Member of the Board of Appeals for the incorporated County of Los Alamos;

PRIORITY PROPERTIES, is a Missouri company operating in New Mexico whose corporate status in New Mexico is uncertain;

LARRY VALDEZ, in his official capacity as an employee of the Community Development Department of the incorporated County of Los Alamos;

STEVE WALLER, individually and in his capacity as a maintenance custodian of the Mari Mac Shopping Center and as an agent of Priority Properties and Mike Margiotta, Manager of the Mari Mac Shopping Center and also, as an agent of Smith's Food & Drug Centers, Inc.;

Defendants.

DEFENDANT STEVE WALLER'S
RESPONSE TO MOTION TO LIFT STAY

COMES NOW Defendant Steve Waller ("Waller"), through his attorneys of record, Riley | Keller | Alderete | Gonzales (David A. Gonzales and Carli M. Marshall), and provides the following Response to Plaintiffs' Motion to Lift Stay ("Motion") [Doc. 87]:

1) On January 11, 2023 this Court entered its Memorandum Opinion and Order [Doc. 76] in which it stayed this matter pending a final decision in the related State Court Cause No. D-132-CV-2021-00002. Waller is not a party in the State Court matter but believes the current Motion is premature. Specifically, although a decision was rendered in the State Court proceedings on March 12, 2024 [Doc 87-1], parties have thirty (30) days from the entry of an order in which to file an appeal. Rule 12-201(A) (b) NMRA. Accordingly, the decision is not final in the State Court proceedings until after April 11, 2024, when the time to file an appeal has lapsed.

2) Under D.N.M LR-Civ 7.1(a) Waller adopts by reference the Response of the County Defendants, filed March 28, 2024 and Smith's Response filed March 28, 2024.

WHEREFORE, Defendant Waller requests that the Court enter an order denying Plaintiffs'

Motion to Lift Stay, and for any such other relief the Court deems proper and appropriate.

RILEY | KELLER | ALDERETE | GONZALES

By: /s/ Carli M. Marshall

David A. Gonzales

Carli M. Marshall

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 1, 2024, a copy of the foregoing was electronically filed through the CM/ECF system, which caused participating CM/ECF counsel to be served with the same by electronic means.

/s/ Carli M. Marshall

Carli M. Marshall